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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SEVENTH SESSION

Report of Mr. Ioan Maxim, Chairman of the Sub-Commission at its forty-seventh session, prepared in accordance with paragraph 13 of Commission on Human Rights resolution 1995/26

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Introduction

1. In its resolution 1995/26 of 3 March 1995, entitled "Work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities", the Commission on Human Rights, having expressed its appreciation for the positive contribution made by the Sub-Commission to the promotion and protection of human rights and having noted with appreciation the spirit of cooperation and the continuing dialogue between the two bodies, inter alia reaffirmed that the Sub-Commission could best assist the Commission on Human Rights by providing it with recommendations based on the different views and perspectives of independent experts, which should be appropriately reflected in the report of the Sub-Commission, as well as in the expert studies carried out under its auspices. The Sub-Commission was encouraged to continue to consider all such reforms of its agenda and methods of work that serve the efficiency of its work, better coordination with other organs and mechanisms in the field of human rights, and better dissemination of the results of its work.

2. The Commission reaffirmed that one of the tasks of the Sub-Commission is a thorough examination of information concerning alleged human rights violations, as well as the presentation of the results of the examination to the Commission. The Sub-Commission was also invited to continue to give due regard to new developments in the field of human rights.

3. In paragraph 13 of the resolution, the Commission decided to invite the Chairman of the Sub-Commission at its forty-seventh session to report to the Commission at its fifty-second session on significant aspects of the work of the Sub-Commission.

4. In pursuance of this request, the Chairman of the Sub-Commission submits the present concise report to the Commission. More details regarding the various aspects of the work of the forty-seventh session of the Sub-Commission will be provided, if necessary, by the Chairman of the Sub-Commission in his statement during the fifty-second session of the Commission. The report of the Sub-Commission on its forty-seventh session is before the Commission in document E/CN.4/1996/2-E/CN.4/Sub.2/1995/51.

I. AGENDA OF THE SUB-COMMISSION AND SOME HIGHLIGHTS OF THE SESSION

5. The agenda of the forty-seventh session of the Sub-Commission included 23 items (see annex I to the report of the Sub-Commission). A new item entitled "The fiftieth anniversary of the United Nations and the Sub-Commission" was included on its agenda (decision 1995/102).

6. The consideration of item 12 of the provisional agenda entitled "Human rights and scientific and technological developments" was postponed until the forty-eighth session of the Sub-Commission (decision 1995/101).

7. In its resolution 1995/26, the Sub-Commission decided to consider the issue of human rights of women and the girl child under every item of its agenda, as well as in all relevant studies undertaken by the Sub-Commission.

8. In dealing with its agenda items, the Sub-Commission has borne in mind its complementary role in relation to the work of the Commission on Human Rights and tried to make its own contribution as a body of experts. The Sub-Commission has been pursuing many tasks in the field of prevention of discrimination and intolerance, protection of vulnerable groups, realization of economic, social and cultural rights, observance of human rights in the administration of justice. It considered the situation of human rights in a number of countries and in the fields of contemporary forms of slavery, human rights of detainees, freedom of movement, humanitarian activities and others. The Sub-Commission has also considered communications under Economic and Social Council resolution 1503 (XLVIII) and brought to the notice of the Commission situations which it has reasonable cause to believe revealed a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.

9. Pursuant to its mandate, the Sub-Commission has continued its research, studies and standard-setting activities in the area of human rights.

10. The attention of the Commission is drawn in this connection to the fundamental study on promoting the realization of the human right to adequate housing undertaken by the Special Rapporteur, Mr. R. Sachar, which was completed at the forty-seventh session of the Sub-Commission. His final report and specific recommendations are contained in document E/CN.4/Sub.2/1995/12.

11. Having considered another final report submitted by the Special Rapporteur, Ms. Erica-Irene A. Daes (E/CN.4/Sub.2/1995/26) and the draft principles and guidelines for the protection of the heritage of indigenous people annexed thereto, the Sub-Commission requested the Special Rapporteur to prepare a supplementary report on the basis of the comments and information received (resolution 1995/40).

12. The attention of the Commission is also drawn to the draft programme of action on the traffic in persons and the exploitation of the prostitution of others (E/CN.4/Sub.2/1995/28/Add.1), which had been reformulated by the Working Group on Contemporary Forms of Slavery and is now transmitted to the Commission with a recommendation for its adoption (resolution 1995/16).

13. Another recommendation stemming from the Sub-Commission provides for the establishment of an open-ended working group of the Commission for the elaboration of policy guidelines on structural adjustment programmes and economic, social and cultural rights (resolution 1995/32).

14. Other proposals of the Sub-Commission involve convening an expert seminar on the practice of forced evictions, organizing a second workshop on a possible permanent forum for indigenous people, establishment of a database on states of emergency and related human rights questions, and updating the resolution of the General Assembly which established the United Nations Voluntary Fund for Indigenous Populations.

15. The Sub-Commission has also recommended the appointment of three new special rapporteurs to undertake studies on the questions of systematic rape and sexual slavery during periods of armed conflict; the implications for

human rights of United Nations action, including humanitarian assistance; and recognition of gross and large-scale violations of human rights as an international crime (see also para. 35 below).

II. ACTION BY THE SUB-COMMISSION ON ITS METHODS OF WORK

16. No sessional working group on the methods of work of the Sub-Commission was established in 1995. However, the Sub-Commission has extensively discussed various questions relating to its role, mandate and organization of work, including those resulting from the implementation of its decision 1994/117 regarding the speaking time, allocation of time and sequence of speaking.

17. As a result of the discussion (see E/CN.4/Sub.2/1995/SR.19-20, 23 and 35), the Sub-Commission decided to adopt, on an experimental basis, the following rulings concerning its methods of work at its forty-eighth session:

(a) All statements in exercise of the right of reply will be made only at the end of the debate on each agenda item;

(b) Denunciations of cases of violations of human rights and specific accusations made under item 6 cannot be repeated under another item of the agenda (decision 1995/112).

18. The Sub-Commission also decided to earmark at least one closed meeting at its forty-eighth session, during which only the members of the Sub-Commission could take the floor, to enable the experts and their alternates to exchange views among themselves on various topics (decision 1995/114).

III. METHODS OF WORK REGARDING THE AGENDA ITEM ON VIOLATIONS OF HUMAN RIGHTS

19. As a follow-up to the discussion held and a confirmation of the decisions adopted at its previous session, the Sub-Commission, in the light of the good results of the practice of considering agenda item 6 at the beginning of the session, 1/ decided to continue that practice and to consider item 6 at its forty-eighth session, in 1996, starting on the day following the adoption of the agenda (decision 1995/113).

20. The Sub-Commission also decided to consider at its forty-eighth session how best to carry out its mandate in examining item 6 of its agenda concerning violations of human rights and fundamental freedoms, while taking into account all reliable sources. In that regard, and taking into account the interest shown in the information contained in the reports of special rapporteurs and chairmen-rapporteurs of working groups of the Commission on Human Rights, the Sub-Commission requested the Secretariat on the one hand to make those reports available to the experts who requested them at the forty-eighth session and on the other hand to undertake appropriate consultations with the special rapporteurs and chairmen-rapporteurs, in particular during their annual joint meeting, so that their preoccupations and those of the Sub-Commission could be taken into account (decision 1995/115).

IV. CONSIDERATION OF NEW DEVELOPMENTS IN THE FIELD OF HUMAN RIGHTS

21. As in the past, the Sub-Commission at its forty-seventh session considered, under agenda item 4 entitled "Review of further developments in fields with which the Sub-Commission has been concerned", the reports submitted by the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization, providing information on developments in their respective activities. Under various items of its agenda, the Sub-Commission also considered 10 letters received from Governments, 58 written statements submitted by non-governmental organizations and a number of documents prepared by the Secretary-General which contained information on new developments relating to various agenda items.

22. The Sub-Commission also focused its attention on new developments in the actual human rights situation in a number of countries and territories based on information submitted to it by members, observer Governments and non-governmental organizations. In particular, the Sub-Commission considered and took action upon such situations in the territory of the former Yugoslavia (resolutions 1995/1, 1995/8 and 1995/10), in the Middle East (resolution 1995/2), in Iraq (resolution 1995/3 and decision 1995/107), in Rwanda (resolution 1995/5), in Colombia (resolution 1995/6), in Guatemala (resolution 1995/7), in the Palestinian and other Arab territories occupied by Israel (resolution 1995/9), in Burundi (resolution 1995/11), in South Africa (resolution 1995/12), in the Islamic Republic of Iran (resolution 1995/18) and in Turkey (decision 1995/108).

23. A number of draft proposals relating to the human rights situation in several other countries and territories were either rejected by a vote or withdrawn by the sponsors (see paras. 210-215, 224-229, 247-249 of the report of the Sub-Commission).

24. Statements were made by the Chairman on behalf of the Sub-Commission on the question of hostage-taking and murder of hostages and on the question of the amnesty law in Peru (see, respectively, paras. 158-163 and 336-338 of the report of the Sub-Commission).

25. Another new subject dealt with by the Sub-Commission at its forty-seventh session was the question of the injurious effects of anti-personnel land-mines (resolution 1995/24).

26. A reference could also be made to Sub-Commission resolutions 1995/4, entitled "Prevention of incitement to hatred and genocide, particularly by the media", and 1995/25, entitled "Protection by competent authorities of everyone against threats, retaliation, pressure or any other arbitrary action as a consequence of legitimate, peaceful and non-violent exercise of the right to strive for the protection of human rights".

27. The Sub-Commission also considered, under agenda item 13 entitled "International peace and security as an essential condition for the enjoyment of human rights, above all the right to life", the question of nuclear tests and the enjoyment of human rights, above all the right to life. No decision

was, however, taken by the Sub-Commission on the draft proposals submitted with regard to this issue (see paras. 372-386 of the report of the Sub-Commission).

28. Similarly, no decision was taken by the Sub-Commission on the draft proposals relating to the question of international terrorism which was discussed under agenda item 4 (see paras. 97-109 of the report of the Sub-Commission).

V. REPORT OF THE CHAIRMAN OF THE FIFTY-FIRST SESSION OF THE COMMISSION ON HUMAN RIGHTS

29. In paragraph 12 of its resolution 1995/26, the Commission on Human Rights invited its Chairman to inform the Sub-Commission on the debate held under Commission agenda item 19 entitled "Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-sixth session: (a) Indigenous issues".

30. Pursuant to that resolution, an invitation was extended to the Chairman of the fifty-first session of the Commission on Human Rights, Mr. Musa bin Hitam. Unfortunately, neither the Chairman nor other members of the Bureau of the Commission on Human Rights were able to come to Geneva to participate in the Sub-Commission's meetings. A statement on behalf of the Chairman of the Commission was read by the Secretary of the Sub-Commission on 14 August 1995 (see E/CN.4/Sub.2/1995/SR.19).

31. Having noted the positive contribution made by the Sub-Commission to the promotion and protection of human rights and the spirit of cooperation between the Commission and the Sub-Commission, the Chairman of the Commission, inter alia, expressed the belief of the Commission that it was essential to maintain as guiding principles the impartiality and objectivity of the Sub-Commission and the independent status of its members and their alternates. The Chairman further stated that the Commission was also convinced that the credibility and effectiveness of the Sub-Commission as an expert human rights body were dependent upon Governments nominating, and the Commission electing as members and alternates of the Sub-Commission, only individuals who possessed genuine expertise in the field of human rights and who were able to act independently of their Governments.

32. The Chairman stressed the valuable role that the Sub-Commission, as a body of independent experts, can play, inter alia in addressing new developments in the field of human rights and also in providing a forum for the contributions of non-governmental organizations towards the noble cause of promoting and protecting human rights around the globe.

VI. REPORTS AND STUDIES

33. In paragraph 5 of its resolution 1995/26, the Commission on Human Rights reiterated its request to the Sub-Commission to implement fully the Guidelines annexed to Sub-Commission resolution 1992/8, including those concerning the number of studies and the requirement of the submission of a preparatory document before a study is entrusted to a special rapporteur.

34. In this regard, the attention of the Commission on Human Rights is drawn to annex V to the report of the Sub-Commission. Part A of the annex refers to two reports by special rapporteurs which were completed at the forty-seventh session of the Sub-Commission. Part B contains a list of eight ongoing studies and reports entrusted to special rapporteurs in accordance with existing legislative authority. Part C refers to the annual report which has been prepared by the Special Rapporteur on a regular basis since 1987. In part D, working papers and other documents are mentioned which are entrusted to members of the Sub-Commission without financial implications. Finally, part E refers to three new studies and reports which are recommended to the Commission on Human Rights for approval (see draft decisions 1, 2 and 3 in chapter I.B of the report of the Sub-Commission).

35. It may be added that, before proposing those three new studies, the Sub-Commission had duly considered the following preparatory documents:

(a) Preparatory document submitted by Ms. Linda Chavez on the question of systematic rape, sexual slavery and slavery-like practices during wartime (E/CN.4/Sub.2/1993/44);

(b) Working paper on the situation of systematic rape, sexual slavery and slavery-like practices during wartime, including internal armed conflict, submitted by Ms. Linda Chavez in accordance with Sub-Commission decision 1994/109 (E/CN.4/Sub.2/1995/38);

(c) Preparatory document submitted by Mrs. Claire Palley on the question of the role of the United Nations in international humanitarian activities and assistance and human rights enforcement, bearing in mind the principle of non-interference (E/CN.4/Sub.2/1993/39);

(d) Definition of gross and large-scale violations of human rights as an international crime: working paper submitted by Mr. Stanislav Chernichenko in accordance with Sub-Commission decision 1992/109 (E/CN.4/Sub.2/1993/10 and Corr.1).

VII. RESOLUTIONS AND DECISIONS

36. On several earlier occasions, the Commission had invited the Sub-Commission to give due consideration to draft resolutions proposed for adoption and to seek the widest possible measure of agreement on them, bearing in mind that such resolutions should be proposed only on subjects that had been thoroughly discussed in the Sub-Commission or in its working groups and should be consistent with its role as a body of independent experts.

37. Pursuant to this request, members of the Sub-Commission, in the drafting of resolutions, decisions or any other proposals, have endeavoured to find the widest possible agreement on them before tabling them. As reflected in the Sub-Commission's reports, 53 resolutions and decisions out of 59 were adopted without a vote, which tends to illustrate the efforts made by the Sub-Commission to work in harmony and in a most constructive manner to carry out its tasks.

38. In this regard chapter II, sections A and B, of the report of the Sub-Commission contains 40 resolutions and 19 decisions adopted at its forty-seventh session. The attention of the Commission is drawn especially to chapter I, sections A and B, containing, respectively, two draft resolutions and 10 draft decisions recommended by the Sub-Commission for adoption by the Commission. Annex IV to the report of the Sub-Commission contains a list of resolutions and decisions referring to matters which are drawn to the Commission's attention and which require consideration or action by the Commission.

VIII. OTHER MATTERS

39. On 8 August 1995, the Sub-Commission, for the second time, 2/ held a joint meeting with the Committee on the Elimination of Racial Discrimination (CERD). The attention of the Commission on Human Rights is drawn to the statement of this joint meeting which was approved on 18 August 1995 (see para. 129 of the report of the Sub-Commission).

40. As in the previous year, the Sub-Commission established a sessional working group on the administration of justice and the question of compensation, under agenda item 10 concerning the question of the administration of justice and the human rights of detainees. Having taken note of the report of the Working Group (E/CN.4/Sub.2/1995/16 and Corr.1), the Sub-Commission requested the Working Group to continue, at the forty-eighth session, the consideration of the basic principles and guidelines proposed by the former Special Rapporteur, Mr. Theo van Boven, in his study entitled "The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms", with a view to making substantive progress in the matter. Mr. van Boven was requested to submit, without financial implications, for the Sub-Commission's consideration at its forty-eighth session, a revised set of proposed basic principles and guidelines on remedies in the light of existing relevant international instruments (decision 1995/117).

41. Of the 26 members of the Sub-Commission, 25 members were present for most of the session. Neither Mr. Miguel Limón Rojas nor his alternate, Mr. Héctor Fix Zamudio, were able to attend the session. In all other cases, when a member was unable to attend, he or she was, as a rule, replaced by the alternate.

42. The session was also attended by 95 States in their capacity as observers (last year: 89), 7 United Nations bodies (last year: 5), 5 specialized agencies (last year: 3), 6 intergovernmental and other organizations (last year: 3), 1 national liberation movement (same as last year) and 123 non-governmental organizations (last year: 115).

43. Every effort was made to organize the work of the forty-seventh session of the Sub-Commission within the time normally allotted. No additional meetings were made available to the Sub-Commission due to the financial constraints of the United Nations. Only 3 hours 30 minutes of meeting time were lost during the whole session through early ending.

Notes

1/ In its decision 1994/117, the Sub-Commission decided, inter alia, that at its forty-seventh session, on an experimental basis, agenda item 6 entitled "Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories: report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII)" would be considered as soon as the agenda was approved.

2/ The first meeting of the two bodies was held in August 1991.